

### **REMARKS**

Reconsideration of the application in light of the following remarks is respectfully requested.

#### **Status of the Claims**

Claims 11, 13 and 15-17 are pending. Claims 1-10 and 18-23 have been withdrawn from consideration. Claims 12 and 14 were canceled in a prior response without prejudice or disclaimer of the subject matter contained therein.

Applicants appreciatively acknowledge the courtesy and effort extended to their representative, Richard J. Katz, by Examiners Imani Hyman and Melba Bumgarner in a November 10, 2009 telephone interview. During the interview distinctions between independent claim 11 and the prior art combination of Weitzel et al. and Davidner et al. was discussed.

#### **Rejections under 35 U.S.C. § 103**

Claims 11, 13 and 15-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,913,588 of Weitzel et al. ("Weitzel") in view of U.S. Published Application No. 2002/0077581 of Davidner et al. ("Davidner"). Applicants respectfully traverse this rejection.

The Examiner contends that Weitzel discloses most of the features of independent claim 11. However, the Examiner relies on Davidner as disclosing an oxygenation device and means designed to control the introduction of oxygen into the blood including a "control device further configured to measure hematocrit . . . ." Detailed Office Action, item 4, page 3 (*citing* Davidner,

¶¶ 0046-0048, 0057, 0082 and 0086; Fig. 1). The Examiner contends that a combination of Weitzel and Davidner renders independent claim 11 obvious.

With regard to Davidner, ¶¶ 0045-49 merely describe an oxygenator 14 and a circuit 201 that stops the function of pumps and clamps by enabling/disabling a power supply 202.

Davidner, ¶¶ 0056-57 describe measuring and controlling the pressure in the superior sagittal sinus during a perfusion procedure that begins with blood flow in a retrograde direction.

Davidner, ¶¶ 0082-83 describe sensing the pressure in the venous sinus where blood ejected from a catheter balloon 716 is delivered via a pressure lumen orifice 714. Davidner, ¶ 0086, describes determining a patient's intracranial pressure by using a pressure transducer 901 in conjunction with the electronic control circuit 201 and a data acquisition circuit 203.

Independent claim 11 recites a control device "configured to measure hematocrit and a partial pressure of molecular oxygen in the blood in extracorporeal circulation." It is respectfully submitted that a combination of Weitzel and Davidner fails to disclose, or suggest, a control device configured to measure hematocrit and a partial pressure of molecular oxygen in blood in extracorporeal circulation, as required by independent claim 11. In contrast, the Examiner acknowledges that Weitzel fails to describe the above-quoted features. With regard to Davidner, that reference merely describes an oxygenator 14 and a circuit 201 that controls the function of pumps and clamps by enabling a power supply 202. Davidner, ¶¶ 0045-49. Further, Davidner merely describes determining a patient's intracranial pressure. Davidner, ¶¶ 0056-57, 0082-83, and 086. Importantly, Davidner fails to describe a control device configured to measure

hematocrit, and also fails to describe measurements of molecular oxygen in the blood in extracorporeal circulation, as required by claim 11.

Accordingly, Applicants submit that a combination of Weitzel and Davidner, to the extent proper, could not render amended independent claim 11, nor dependent claims 13 and 15-17, obvious.

Reconsideration and withdrawal of the rejection of claims 11, 13 and 15-17 under 35 U.S.C. § 103(a) as being unpatentable over Weitzel in view of Davidner is respectfully requested.

**CONCLUSION**

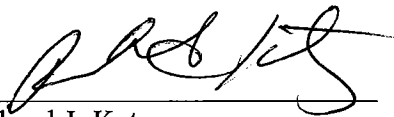
In view of the foregoing it is believed that remaining claims 11, 13 and 15-17 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

The Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this submission, or to credit any overpayment, to Deposit Account No. 04-0100.

Dated: November 24, 2009

Respectfully submitted,

By 

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